



INTERIOR BOARD OF INDIAN APPEALS

Tom Dudek and Bill Haensly v. Acting Assistant Portland Area Director,
Program Services, Bureau of Indian Affairs

23 IBIA 88 (11/16/1992)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

TOM DUDEK and BILL HAENSLY,
Appellants

v.

ACTING ASSISTANT PORTLAND AREA
DIRECTOR, PROGRAM SERVICES,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Dismissing Appeal and
: Remanding Case
:
:
: Docket No. IBIA 92-199-A
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:
: November 16, 1992

This is an appeal from a May 4, 1992, decision of the Acting Assistant Portland Area Director, Bureau of Indian Affairs (Assistant Area Director; BIA), which approved a trust acquisition request made by Dean Williams for land within the Lummi Reservation. For the reasons discussed below, the Board dismisses the appeal but remands this matter for further proceedings.

On June 10, 1991, Williams, a member of the Lummi Tribe, applied to the Puget Sound Agency, BIA, to have two parcels of land within the Lummi Reservation taken into trust status for his benefit. One parcel, containing 1.85 acres, is Lot 4 of a subdivision known as the Northgate Short Plat. The other parcel, containing 2.92 acres, is apparently not part of any subdivision. Williams stated on his application for trust acquisition that his intended use of the property was: "Future home. No proposed change at this time."

While the request was still pending before the Superintendent, several individuals, apparently all non-Indian residents of the area in which the parcels were located, wrote to the Superintendent, objecting to the trust acquisition request. Most of the letters alleged that Williams had informed local residents that he intended to "put in an RV park for casino gamblers."

On March 25, 1992, the Superintendent, while noting the objections received, recommended to the Area Director that Williams' trust acquisition request be approved.

The Assistant Area Director approved the request on May 4, 1992. In a memorandum to the Superintendent, he stated:

The decision for approval is based on our consideration of the criteria listed in Title 25 of the Code of Federal Regulations, [section] 151.10. The Act of June 18, 1934 (48 Stat. 984), authorizes the subject acquisition. Although several non-Indian owners in the area wrote letters regarding a purported

future use as a Mobile Home Court, Mr. Williams indicated to this office by telephone that he has no such plans and that any change from the vacant land use would be to build a home on the property. Whatcom County provided no objections when informed of the pending application for conversion. There should not be any adverse impact on local government as a result of this conversion. No jurisdictional or land use problem are anticipated as a result of the proposed conversion of this on-reservation tract of land to trust status. The Bureau of Indian Affairs is equipped to handle the additional responsibilities which may result from this on-reservation trust acquisition.

On June 3, 1992, the Area Director sent copies of his May 4, 1992, approval memorandum to the individuals who had written to object to the acquisition. The Area Director stated that the decision could be appealed to this Board.

Also on June 3, 1992, the Area Director informed Williams that he was suspending processing of Williams' application until Williams provided more information concerning his intended use of the property, and until BIA considered the new information. The Area Director noted that he had been informed Williams had again stated to neighbors that he intended to construct a mobile home park. The Area Director's letter stated: "Our preliminary approval of the fee to trust transaction relied on your representation that you only intended to build a home on the property." William responded on June 8, 1992, stating in part: "I do not have any current plans. As a property owner, I reserve the right to use my property for any lawful purpose."

Appellants' notice of appeal was received by the Board on July 6, 1992. Dudek purported to file the appeal on his own behalf and on behalf of four other individuals. Because it was not apparent that Dudek was qualified under 43 CFR 1.3 to represent others in Departmental proceedings, the Board advised the parties that it would consider the appeal to have been filed by Dudek alone unless he could show that he was a qualified representative. Dudek failed to make such a showing. He did, however, submit a purported "amended notice of appeal," which was signed by the other four individuals. This notice, postmarked July 31, 1992, was untimely as to George E. Johnson, Daniel Barrett, and M. L. Groves, all of whom received the Area Director's June 3, 1992, decision on June 6, 1992. There is no evidence in the record that the fourth individual, Bill Haensly, received a copy of the June 3, 1992, letter. Therefore, Haensly will be considered to have filed a timely appeal.

On September 21, 1992, Williams filed a motion to intervene and a motion to require appellants to post an appeal bond. The Board granted Williams' motion to intervene. It denied his motion for appeal bond in part but gave appellants an opportunity to respond to the motion insofar as it sought a bond to cover 1992 real estate taxes. Appellants' response was received on October 19, 1992.

This appeal is now ripe for decision. The Board believes that no purpose would be served in delaying resolution of the appeal by ordering appellants to post an appeal bond at this time. Accordingly, Williams' motion for an appeal bond is denied.

Appellants were advised in the pre-docketing notice for this appeal that they would be required to show that they had standing to pursue the appeal. They were reminded of this requirement in the notice of docketing and were requested to discuss the matter in an opening brief. They did not file an opening brief. Further, although both the Area Director and Williams argued in their briefs that appellants lacked standing, appellants failed to respond to those arguments and, in fact, failed to file a reply brief at all.

Appellants are neighbors who object to the use they believe Williams intends to make of the property. In the statement of reasons filed with their notice of appeal, appellants contend that Williams' purpose in seeking the trust acquisition is to circumvent certain restrictive covenants and county zoning regulations now applicable to his property. They do not, however, contend that they themselves have a legal interest in maintaining those restrictions upon Williams' property.

In light of appellants' failure to support their standing with any argument whatsoever, the Board will dismiss this appeal for lack of standing.

As noted above, the Area Director suspended his original decision in this matter pending receipt and consideration of Williams' response to the Area Director's June 3, 1992, letter to him. ^{1/} It is apparent, therefore, that another decision must be rendered by the Area Director. Therefore, this matter will be remanded to him for issuance of a new decision, taking into consideration Williams' June 8, 1992, letter. The Area Director may also take into consideration any pleadings or other documents added to the record during the course of this appeal.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is dismissed, and the matter is remanded to the Area Director for further proceedings.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

^{1/} This was a procedurally confusing step. The Area Director suspended his decision at the same time he gave a number of individuals the right to appeal it. In essence, appellants were given the right to appeal an ineffective decision.